

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RAYMOND TRIMM)	
Claimant)	
)	
VS.)	
)	
FRANK BILLS TRUCKING INC.)	
Respondent)	Docket No. 1,020,599
)	
AND)	
)	
LIBERTY MUTUAL INSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier request review of the March 8, 2005 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

The claimant, a truck driver, was injured after he had stopped to assist a truck driver for another company whose truck was disabled and partially on the road. The Administrative Law Judge (ALJ) found claimant's accidental injury arose out of and in the course of employment.

The respondent requests review of whether claimant's accidental injury arose out of and in the course of employment. Respondent argues claimant's activities constituted a substantial personal deviation from his work duties and, as a consequence, the injuries suffered did not occur out of and in the course of employment. Respondent requests the Board to find claimant failed to prove a compensable injury under the Act.

Claimant requests the Board to affirm the ALJ's Order for Compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

On September 23, 2004, claimant was working as a truck driver for respondent and had just picked up a load of metal product to take to Anniston, Alabama. As he was driving he heard on the CB radio that another driver's truck was on fire, still partially in the roadway, and that someone needed to stop and help. As claimant came upon the disabled truck he pulled over and stopped to see if he could provide assistance.

By this time, the other driver had separated one of his trailers from the section on fire and was exiting the cab of his truck with a fire extinguisher. Claimant instructed the other driver how to operate the fire extinguisher and where to aim it to extinguish the fire which was apparently in one of the brakes. After the fire was extinguished the other driver handed claimant the fire extinguisher to make sure the fire did not reignite while he placed safety flares behind the trailer which was partially in the roadway. When the other driver returned the claimant handed him the fire extinguisher and started to return to his truck. He stated:

. . . And I handed him back his fire extinguisher, and as I turned to go back to my truck, I had to go by where the fire had been on that tire, and it exploded, and it blew me over into the ditch. And about the next thing I remember, I was in the paramedic truck on the way to the hospital.

Q. (By Mr. Phalen) Okay, let's stop there. When you came upon the truck, there was no lights? The truck that was having the fire was - - it had two trailers on it?

A. Yeah, that's correct.

Q. And the lights were out on the back trailer?

A. Yes. It didn't have no lights.¹

Claimant sustained a closed head injury as well as injuries to his face, nose and eyes.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.² Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.³

¹ P.H. Trans. at 7.

² K.S.A. 44-501(a).

³ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995).

The two phrases arising “out of” and “in the course of” employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase ‘out of’ employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises ‘out of’ employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises ‘out of’ employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase ‘in the course of’ employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer’s service.⁴

Respondent argues the accident did not arise out of and in the course of claimant’s employment because stopping to help the other driver was a personal errand and as such a substantial deviation from his regular job driving the truck for respondent. Moreover, respondent further argues that stopping to assist the other driver did not further any business interests of the respondent.

Claimant indicated that in order to receive a commercial driver’s license he had taken classes at Fort Scott Community College. As part of that training he was instructed to stop and render assistance if he came upon an emergency situation. He testified:

Q. Sir, you have a CDL license. Is that correct?

A. Yes.

Q. And did you have any training as part of your CDL license?

A. Yes. Yes.

Q. Were you ever instructed in whether you had a duty to render assistance in emergency situations?

A. Yes, I was. Yes.

Q. What were your instructions, if you recall?

A. Well, I went and got my license through Fort Scott.

Q. Community College?

⁴ *Id.*

A. Yeah, tractor-trailer driving school, and they told me that any time I came upon a road emergency situation - -

MR. STREIT: Judge, I need to object to the hearsay.

JUDGE AVERY: Hearsay is allowed for preliminary hearing purposes. Overruled.

A. - - that being a - - the way it was explained to me, Your Honor, was if I came upon emergency situation while in a commercial vehicle, that you were to kind of find a safe haven, you know, amongst the accident zone and do your best that you could to warn others by, you know, maybe even blocking the highway or putting your vehicle where it could be seen over the vehicle in distress, with the warning flashers on, and to see what you could do about rendering assistance to the driver of the disabled vehicle, either to - - moving it or securing it.

Q. (By Judge Avery) All right. As part of your training, did they ever explain why they had that kind of instruction or why they gave you that kind of instruction?

A. Well, yes. I mean, any emergency situation, you know, if at night, it's even worse to recognize an emergency situation, coming upon it in the dark, especially when there's no safety flares or markers out.

Q. So was it your impression that you were supposed to prevent additional accidents if you could?

A. Yes, I believe so, Judge.

Q. Was that the - - I mean, they told you - - you were told to put out safety flares and markers and try to stop any additional damage occurring or any additional accidents.

A. Right.

Q. Is that correct?

A. Right, more accidents occurring because of the one, yes.⁵

As part of his licensing as an over-the-road truck driver the claimant was trained and believed it was his duty to stop and assist other vehicles in emergency situations. An employer's order to perform a task does not necessarily need to take the form of a command if under all the circumstances the employee's impression of what is expected of him is sufficient to motivate the employee to undertake the activity. It does not appear

⁵ P.H. Trans. at 26-28.

from the record that respondent disabused claimant of his training that he had a duty to provide assistance in emergency situations.

In addition, it is generally held that an activity undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment.⁶ The ALJ noted in part:

The employer's interests were served in this case because claimant's actions helped to prevent further accidents and supported the duty of the driver to provide assistance to other drives [sic] in emergency situations. The employer is served by safer roadways and an environment where drivers assist each other.⁷

The Board agrees and affirms.

WHEREFORE, it is the finding of the Board that the Order For Compensation of Administrative Law Judge Brad E. Avery dated March 8, 2005, is affirmed.

IT IS SO ORDERED.

Dated this 31st day of May 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Michael D. Streit, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁶ 2 *Larson's Workers' Compensation Law*, Ch. 27, at 27-1.

⁷ ALJ Order (Mar. 8, 2005) at 1.